IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) Writ Petition (Ld) No. 265 of 2006

Union of India ..Petitioner

vs.

1. Priyesh Bheda and others ...Respondents

Mr.Vinay Masurkar with Mr.N.D.Sharma and Mr.,D.A.Dubey for petitioner.
Respondent no.1 in person

(2) Writ Petition No. 433 of 2006

Priyesh Bheda ..Petitioner

vs.

1. Union of India and another ..Respondents

Petitioner in person.
Mr.Vinay Masurkar with Mr.N.D.Sharma and Mr.,D.A.Dubey for respondents.

Judgment reserved on:21.2.2007
Judgment pronounced on 4.5.2007

CORAM: J.N.PATEL &
& S.C.DHARMADHIKARI JJ.
4th May,2007

P.C.(Per S.C.DHARMADHIKARI J.)

1. These petitions were heard together as they involve common question of fact and law. Hence, they are being disposed of by this common judgment.

2. Writ petition no.433 of 2006 prays for implementation of benefits conferred by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995. The petitioner has prayed that a writ of mandamus be issued to the respondents to absorb him in service as per the merit preference in Indian Revenue Service (IRS for short).

3. In substance, the petitioner has prayed for implementation of the order dated 7th March,2005 delivered by the Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A.No.6720 of 2004 but in a modified form as per his Merit Preference.

4. The Union of India and other respondents to the above original application have challenged the legality and validity of this order of the Central Administrative Tribunal in Writ Petition No.265 of 2006.

5. The facts are very few and simple. The petitioner appeared for Civil Service Examination under the physically handicapped quota. Out of 413 candidates selected, the petitioner secured 273rd rank. The contention of the petitioner is that amongst the four handicapped persons selected, he has the highest rank and he should have been allocated to I.A.S or I.R.S. or the Indian Customs and Central Excise Service. However, he has been allocated to Indian Postal Accounts and Finance

Service which was way down in the options given by him.

The petitioner has stated that P.H.Candidates have been taken in the IAS in the past as in 1969. In another case, one Ms.Sonal Mishra who was rejected in the I.A.S. due to abnormally low vision was taken into I.A.S. upon instructions of the Special Committee. The petitioner has stated that there is Disability Quota in Government Employment and, therefore, for 413 vacancies atleast 12 handicapped persons should have been selected where as only four persons have been selected in this quota for the examination year 2003. In 2005 Examination, vacancies have been notified for I.A.S. and I.R.S. under the P.H.category. The petitioner made a representation to Respondent No.1. However, there was no favourable response. Hence, he filed the above O.A. The Union of India filed its reply. It contended that the Disabilities Act is complied with.

6. The petitioner had filed two Miscellaneous Petitions (M.Ps.). By M.P.No.35 of 2005 he had requested for amendment of the O.A. in which he made prayer for a special Medical Board and that he may be allowed to join the departmental training at Gaziabad after the completion of Foundation Course at Mussourie. By M.P.No.36 of 2005 he impugned an order which was passed by the Department of

Personnel and Training on 25th October, 2004 and his allotment to the P.& T. Accounts and Finance Service Group "A" vide O.M. dated 21.10.2004. The petitioner has also filed a rejoinder to the reply. However, as the petitioner had to join the Foundation Course at L.B.S. National Academy of Administration on 14th March, 2005 he did not press for them and requested for disposal of the O.A.

7. In the oral submission, the petitioner contended that he gave 12th preference for Pondicherry Civil Service Group "B" whereas 13th preference for Indian P.& T. Accounts and Finance Service Group "A" and 14th preference for Indian Audit and Accounts Service Group "A". Therefore, his allotment to Indian P. & T. Accounts and Finance Service Group "A" is not correct. The reply filed by the respondents clearly indicates that there was one vacancy reserved for P.H. in the category of Locomotor disability in Pondicherry Civil Service Group "B" and, therefore, being the highest ranker among the P.H.category, the petitioner should have been given this department as per his preference and not allotted to India P.& T. Accounts and Finance Service.

8. The Central Administrative Tribunal held that the

petitioner cannot claim the appointment in the Departments of the Government which have not notified any vacancy for physically handicapped category in their service. The

Tribunal has relied upon the settled principle that only because the person finds his name in the select list it does not entitled him to appointment. It also held that the provisions of the Disabilities Act would entitle the petitioner to be allocated to a service which has notified posts for physically handicapped candidates. The job of identification of such post is done by the concerned cadre controlling authority in consultation with the Ministry of Social Justice and Empowerment. Thus, only after identification of the posts the candidates can claim appointment to the physically handicapped category. After considering the material placed on record, the Tribunal could identify Four (4) Departments which notified the posts for physically handicapped category and ultimately directed that if nobody is allotted to "Pondicherry Civil Services Group "B" or if anybody is allotted but has not joined the post, then, the petitioner be allotted to that service in future on his higher preference.

9. It is the correctness of this finding and direction which is the subject matter of challenge in these petitions.

10. We have heard the petitioner who appears in person and Shri Masurkar appearing for the Union of India and other respondents.

11. Since the petitioner moved us in person and urged that the petitions be taken up forthwith for hearing, we gave due consideration to his request and permitted their parties to make oral submissions as well as tender the written arguments.

12. The petitioner, who is appearing in person, has urged that he has shown his willingness to settle for Indian Revenue Service since it was his second choice. This was on account of practical difficulties which the disabled person entering the Indian Administrative Service is likely to face. The petitioner appeared for the examination conducted by U.P.S.C. in 2003 and qualified with 1198 marks out of 2300. He has been placed in rank 273 in general merit out of 413 candidates. He claims to be topper amongst 4 handicapped candidates. He submits that in the light of sec.33 of the Disabilities Act, atleast 12 posts ought to have been offered to the disabled. However, U.P.S.C. selected only 4 such persons and even out of them 3 have been issued appointments by Respondent no.1. That apart, he submits that nowhere in the qualification or in Rules it is specified that the

handicapped candidates will be considered for the post in P.& T.Accounts and Finance Service. Thus, he is entitled to be absorbed in I.A.S. or other Group "A" service. He submits that there was no reason for him being relegated to Pondicherry Civil Services. He submits that the direction of the Tribunal is, therefore, required to be quashed and set aside.

13. On the other hand, Union of India submits that from the record of the respondents it is apparent that the petitioner appeared for Civil Service Examination 2003 by taking benefit of reduced standard for Physically Handicapped i.e. below the general cut off mark approved by the Respondent No.2 for filling up 26 vacancies for various categories. The Rules for CSE 2003 were notified in the Extraordinary Gazette Notification No.13018/5/2002-AIS (I) dated 7.12.2002. For CSE 2003, there were total four (4) vacancies reserved for PH candidates (i.e. one in P&TFAS in the category of locomotors disability or cerebral palsy or hearing impairment, one in IA& AS in the category of Locomotive disability or Cerebral palsy, One in AFHQ Service in the category of hearing impairment and one in Pondicherry Civil Service, Group "B", in the category of locomotor disability or cerebral palsy. Based on the vacancy position, service preference, medical status and

information received from the UPSC, the 4 PH candidates recommended on the basis of CSE 2003 have been considered for allocation against 4 vacancies reserved for them.

14. It is pointed out to the Tribunal that the petitioner indicated 12th preference for the Pondicherry Civil Services, Group "B" and 13th preference for the Indian P & T Accounts and Finance Service, Group "A". The Union of India states that only vacancy reserved for physically handicapped candidate in Pondicherry Civil Services,Group "B" was also reserved for O.B.C. The petitioner belongs to General category. The Union of India pointed out that the persons selected against the physically handicapped quota have to be placed in the appropriate category i.e. if he belongs to SC category he will be placed in that quota by making necessary adjustments as per the Horizontal rule of reservation provided for the Physically Handicapped there by the quota reserved for SC/ST does not change.

15, Thus, there was only one vacancy in Pondecherry Civil Services, Group "B" for which the petitioner has indicated higher preference over the Indian P & T Finance and Accounts Service. The Union of India states that as the Indian P & T Accounts and Finance Service, Group A has two vacancies for general category candidates, the petitioner

has been placed in that service in accordance with the rulings of the Hon’ble Supreme Court in the cases of Shankarshan Das Vs. UOI 1991 SCC (L& S) 800 and Indra Sawhney Vs. UOI (1992 Supp.(3) SCC 217.). It is pointed out that joining instructions were given on 6th September, 2004 and the petitioner is presently taking training in Group "A" post in Indian P & T Accounts and Finance Service.

16. The Union of India has contended that the Tribunal is not justified in directing that in case, nobody has been allotted to Pondicherry Civil Services Group "B" or in case allotment is made but nobody has joined the said service, the petitioner be allotted to that service in view of his higher preference. This direction is contrary to law in as much as the said post is meant to be filled in by physically handicapped but also belonging to OBC category as per the reservation notified for the said post. Shri Masurkar also invited our attention to the case of a polio victim wherein the direction of the Union of India was upheld by the Principal Bench of New Delhi of C.A.T. He submits that there are contradictory directions of the Benches of C.A.T., namely, the Principal seat at Delhi and bench at Mumbai. In such circumstances the allotment of the petitioner made by the Union of India to P.& T. Accounts and Finance Service Group A is justified

and the petition deserves to be dismissed.

17. After having perused the petition and the annexures thereto including the impugned order and direction, we are of the view that the petitioner cannot succeed before us and stake a claim to Indian Administrative Service or Indian Revenue Service as per his choice. No fault could be found with the direction of the Tribunal when it holds that merely reserving a post for physically handicapped is not fulfilling the mandate of law, and identifying such post is what is necessary and that alone would mean implementing the law in letter and spirit. Thus, having ascertained from the record the factual position, the Tribunal has not disturbed the decision of the Union of India to accommodate the petitioner in P & T Finance and Accounts Services Group "A" or in Pondicherry Civil Services Group "B". At the same time, considering that the petitioner is physically handicapped person and in the facts peculiar to his case when he gave higher choice for Pondicherry Civil Services that the Tribunal issued the impugned direction. If nobody has joined the said Pondicherry Civil Services Group "B" post then alone the directions of the Tribunal have to be implemented by the Union of India. The petition filed by the Union of India is silent with regard to any such joinder. All that has been urged therein is the post in Pondicherry Civil

Services is reserved for O.B.C.handicapped and though the petitioner is physically handicapped he is not O.B.C. In our view, if without disturbing the reservation a direction is issued by the Tribunal to accommodate the petitioner and that too in case that reservation is not filled in, no prejudice would be caused to the Union of India. It would be just, fair and proper to conclude that the Examination being of 2003, the impugned order directing accommodation of the petitioner having been delivered on 7th March, 2005, it does not warrant our interference. In our equitable and discretionary jurisdiction a physically handicapped person like the petitioner being directed to be accommodated in a broad category meant for such persons, in peculiar facts, we decline to interfere.

18. We understood and interpret the direction of the Tribunal to mean that in the event the physically handicapped candidate for whom Pondecherry Civil Services post is also reserved has not joined, then, the petitioner who is physically handicapped should be accommodated. Once such is the nature of the direction, then there is no need to go into any larger controversy. The petitioner has also been accommodated in as much as between 12th and 13th preference or choice he is directed to be accommodated in the 12th and that too if there is vacancy.

The petitioner's case as a physically handicapped person has been considered sympathetically and based upon his merit and choice he has already been given the suitable post in P. and T accounts Financial Services Group "A". Therefore, the purpose for which the reservation for disabled is made in the services is achieved. In the peculiar facts and circumstances of this case we do not think that we should exercise our powers under Article 226 of the Constitution of India and interfere with the directions of the Tribunal any further.

19. The petitions are accordingly dismissed. Rule stands discharged with no order as to costs.

(J.N.PATEL J.)

(S.C.DHARMADHIKARI J.)